

**From:** Warren L. Rutledge  
**To:** Microsoft ATR  
**Date:** 11/17/01 9:26am  
**Subject:** Regarding proposed settlement with Microsoft

Having read extensively on the case, judgements, and the proposed settlement, I felt as though I needed to express my views on the topic to you.

First, I applaud your efforts to stop Microsoft's predatory practices within the software industry. As someone who has worked in the information technology field for the past 11 years, I find Microsoft's practices to be very chilling. Their unwillingness to allow any type of competition, use of underhanded (and now demonstrably illegal) tactics, and immense wealth are a continuing damper on true innovation in the industry. No one wants to try to go forward in a new market because Microsoft may decide that's where they compete and they'll destroy you.

However, your efforts in regards to the proposed settlement have fallen woefully short of the mark. It appears to my reading that the agreement is largely without teeth, that Microsoft essentially dictated the terms, and that rather than having chastised Microsoft, you are in fact allowing their behavior to continue virtually unchecked.

What concerns me the most is the apparent lack of technical understanding by the DOJ lawyers. The Microsoft team is obviously competent in this regard. While I am certain the government lawyers were doing their best, in this case it appears that they were quite clearly in unfamiliar territory. I would suggest that it would be wise to contract with technologically savvy law firms for consulting on these types of cases in the future.

As for the remedies, I was stunned at the complete lack of teeth.

Having won what appeared to be a slam dunk on the facts at both the trial and on appeal, it seems that you were in a far better position to set terms. Further, you missed the most egregious types of behavior that could be easily remedied.

For example, Microsoft routinely discourages competition by keeping all document formats proprietary. There is no business reason for these to be proprietary as all the intellectual property to do the processing is in the actual code, not the document formats. When competitors close in on providing compatibility with the Microsoft document formats, Microsoft changes these formats without warning and in ways that break competing products ability to import them properly. You could have done the world a great service simply by specifying in the agreement that they could not keep their document formats proprietary and that they must give 6 months notice of any changes to their formats prior to implementation.

Finally, I am wondering why Microsoft is allowed to financially unpunished. I can understand not requiring any type of jail time, but how can you justify not stripping them of at least some portion of their ill gotten gains? Again, that just feeds speculation that this was a completely political settlement bought and paid for by Microsoft last year. As a life long registered Republican, I find that thought revolting but I cannot point to any cogent argument on the part of the DOJ to say why they did not pursue any type of fine. If you do have some type of argument as to why a company who used illegal practices to eliminate competitors and keep building monopoly profits should be allowed to keep all they have gained from their illegal activity, I'd be interested to hear it.

I am certain that you are hearing from a great many people in my career field who are as surprised as I was. Please understand that we expected that having won in court, that you were going to put some restrictions on Microsoft. What we see is that while Microsoft appears to you as a chastised company, it is quite clear to those of us who must work in their shadow that they are far from even being shamed. They have already indicated that they will not change any of their practices as a result of this agreement because there are loopholes for every occasion.

Please reconsider your ill advised settlement.

Sincerely,  
Warren L. Rutledge  
Boise, Idaho